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IN THE  
COURT OF APPEALS OF INDIANA

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In the Matter of the  
Guardianship of Donnell Lee  
Roberts, *an Adult (now deceased)*,

James Wesley Frady,  
*Appellant-Petitioner*,

v.

Patrick Hart,  
*Appellee-Intervenor*,

April 21, 2021

Court of Appeals Case No.  
20A-GU-1837

Appeal from the Hancock Superior  
Court

The Honorable Trent Meltzer,  
Special Judge

Trial Court Cause No.  
30D01-1708-GU-52

**Robb, Judge.**

## Case Summary and Issues

- [1] James Frady served as Guardian for Donnell Roberts. After Roberts died intestate, an estate was opened for him with his nephew, Patrick Hart, serving as Personal Representative (the “Estate”). Subsequently, Frady filed a final accounting in the guardianship and petitioned the trial court to grant him authority to exercise estate planning of Roberts’ estate. The Estate objected to Frady’s final accounting, specifically Frady’s treatment of a Merrill Lynch check issued to Roberts. Following a hearing, the trial court issued findings of fact and conclusions of law sustaining the Estate’s objections in part and overruling them in part. In a separate order, the trial court denied Frady’s petitions to exercise estate planning.
- [2] Frady now appeals, raising two issues which we restate as: (1) whether the trial court erred in sustaining the Estate’s objection to Frady’s depositing the Merrill Lynch Check after Roberts’ death; and (2) whether the trial court erred in denying Frady’s petitions to exercise estate planning without holding a hearing. Pursuant to Indiana Code section 29-3-12-1(e), we conclude that the trial court did not err in denying Frady’s petitions to exercise estate planning but erred in sustaining the Estate’s objection to Frady depositing a check as instructed after Roberts’ death. Accordingly, we affirm in part and reverse in part.

## Facts and Procedural History

- [3] Frady and Roberts had been friends for over twenty years. *See* Transcript of Evidence, Volume 2 at 10. On May 3, 2017, Roberts and Frady opened a joint checking account with Greenfield Banking Company (“Greenfield Bank”) with an account number ending in 1415. *See* Exhibit List, Volume 1 at 9.
- [4] Several months later, on August 17, Frady petitioned for appointment as guardian over the person and estate of Roberts. Roberts consented to the guardianship.<sup>1</sup> Subsequently, the trial court held a hearing and appointed Frady as guardian. On November 17, Merrill Lynch issued Roberts a required minimum distribution check (“RMD Check”) from his Individual Retirement Rollover Account in the amount of \$145,754.33.
- [5] After Roberts received the RMD Check, on approximately November 20, he “made out a deposit ticket, [and] gave [Frady] the check and the deposit ticket[.]” *Tr.*, Vol. 2 at 34. Frady and Roberts planned to deposit the RMD check in the Greenfield Bank joint checking account at the end of the week. However, on the morning of November 22, Roberts passed away. Later that day, Frady deposited the RMD Check in the Greenfield Bank checking account ending in 1415. *See Ex.*, Vol. 2 at 78.

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<sup>1</sup> Robert had already appointed Frady as his Durable Power of Attorney. *See* Exhibit, Volume 1 at 154.

- [6] Although Roberts died intestate, he and Randall Shouse, his attorney, had discussed writing a will in which Roberts intended to leave almost everything to Frady. However, Randall did not draft anything for Roberts.<sup>2</sup> *See Ex.*, Vol. 1 at 80.
- [7] In January of 2018, the Estate was opened for Roberts, with Patrick Hart serving as Personal Representative. On August 18, 2018, Frady submitted a final accounting in the guardianship case and filed a petition requesting the court approve the final accounting. Two days later, the Estate filed six objections to the final accounting, including an objection to the treatment of the RMD Check that was deposited after Roberts' death. The Estate claimed that the RMD Check became an asset of the Estate when Roberts died.
- [8] On September 24, 2018, Frady filed two petitions requesting authority to exercise estate planning powers: the first requested authority to change the beneficiary designation on a Merrill Lynch bank account worth approximately \$722,015; and the second requested authority to make gifts on behalf of Roberts. The following day, without holding a hearing, the trial court denied both petitions.

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<sup>2</sup> Frady states, "Shouse drafted a Will leaving everything to Frady, although Roberts passed away before signing." Appellant Brief at 17. Frady makes this claim multiple times in his brief. However, the record material Frady cites does not support this assertion and in fact, during Shouse's deposition, he responded "No" when asked, "Did you actually have a will on your computer or dictated of any kind, prepared? Was anything in the drafting stage?" *Ex.*, Vol. 1 at 80.

[9] On March 13, 2020, the trial court held a hearing on the petition by Frady to approve the final accounting and the Estate's objections.<sup>3</sup> On July 21, the trial court entered findings of facts and conclusions of law pursuant to Indiana Trial Rule 52 and concluded, in part, that:

The RMD Check was received by [Roberts] prior to his death, and Merrill Lynch reflected the RMD Check funds as having been withdrawn from the Merrill Lynch IRRA on November 17, 2017 []. The Guardian Final Accounting also reflects the disbursement of the RMD Check funds on November 17, 2017, from the Merrill Lynch IRRA, and the corresponding addition to the Greenfield Bank Account ending in 1415 on November 22, 2017. Frady testified at the hearing that Roberts had not endorsed the check at the time of his death. The RMD Check funds became an asset of the Estate at the time of Roberts's passing, and Frady as guardian was required to deliver the RMD Check to the representative of the Estate, pursuant to IC 29-3-12-1(e)(1)(B).

Appealed Order at 5. Therefore, the trial court sustained the Estate's objection to the depositing of the RMD Check and ordered Frady to deliver the \$145,754.33 to the Estate. Frady now appeals.

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<sup>3</sup> Prior to the hearing the Estate filed a request for special findings of facts and conclusions of law pursuant to Indiana Trial Rule 52. Appealed Order at 1.

# Discussion and Decision

## I. Guardianship Powers

[10] Indiana law allows for the appointment of a guardian to act in the best interest of a person who is unable to care for himself or for his property. *See* Ind. Code ch. 29-3-1 to -13. In general, the guardian has power to conduct the protected person's affairs. Ind. Code § 29-3-8-2. Further, under Indiana Code section 29-3-8-4, a guardian may exercise all powers required to perform their responsibilities, including powers conferred upon personal representatives by Indiana Code section 29-1-7.5-3. Ind. Code § 29-3-8-4(10). Indiana Code section 29-1-7.5-3 permits the distribution of assets of the estate, taking into consideration the decedent's probable intention. Ind. Code § 29-1-7.5-3(28).

[11] However, a guardianship terminates by reason of the death of the protected person, Ind. Code § 29-3-12-1(b)(2), and when it does, the guardian's powers cease except as provided in subsection (e), which provides:

(1) The guardian may do the following:

(A) Pay the expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust.

(B) Deliver the remaining property for which the guardian is responsible to the protected person's personal representative[.]

(C) Request the health records of the protected person[.]

[12] Roberts died before Frady deposited the RMD check or filed either petition for authority to execute estate planning. It is undisputed that, as a matter of law, the guardianship terminated upon Roberts' death. Thus, we must determine whether Indiana Code section 29-3-12-1(e) allows for either of these actions to be taken by a guardian after the death of the protected person and the termination of the guardianship.

## II. Authority to Deposit Check

[13] Frady argues that “the Trial Court should have concluded as a matter of law that the RMD check belongs to Frady, and that he properly deposited the check into Roberts' bank account a few hours after he passed away.”<sup>4</sup> Appellant Br. at 13.

[14] When the trial court issues findings and conclusions as provided for in Indiana Trial Rule 52(A), we apply a two-tiered standard to review the trial court's order. *Oil Supply Co, Inc. v. Hires Parts Serv., Inc.*, 726 N.E.2d 246, 248 (Ind. 2000). “We determine whether the evidence supports the findings and the

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<sup>4</sup> Frady also argues that Roberts made a valid inter vivos gift to Frady by delivering to him the check and deposit slip. We disagree. An inter vivos gift “is one by which the donee becomes in the lifetime of the donor the absolute owner of the thing given.” *Shourek v. Stirling*, 652 N.E.2d 865, 867 (Ind. Ct. App. 1995). A valid inter vivos gift occurs when: “(1) the donor intends to make a gift; (2) the gift is completed with nothing left undone; (3) the property is delivered by the donor and accepted by the donee; and (4) the gift is immediate and absolute.” *Fowler v. Perry*, 830 N.E.2d 97, 105 (Ind. Ct. App. 2005). “The donor must intend to part irrevocably with absolute title and control of the thing given at the time of making the gift.” *Hopping v. Wood*, 526 N.E.2d 1205, 1207 (Ind. Ct. App. 1988), *trans. denied*. Because Roberts intended for Frady to deposit the check into a bank account under Roberts' name, Roberts did not intend to part irrevocably with the check. *See Shourek*, 652 N.E.2d at 867 (“With respect to bank accounts, the mere fact that money is deposited in a joint account to the credit of the owner and another is not sufficient to show an intent to make a gift to the other.”).

findings support the judgment.” *Id.* (quotation omitted). In deference to the trial court’s proximity to the issues, “we disturb the judgment only where there is no evidence supporting the findings or the findings fail to support the judgment.” *Id.* (quotation omitted). In reviewing the trial court’s entry of special findings, we neither reweigh evidence nor reassess witness credibility. *Yates–Cobb v. Hays*, 681 N.E.2d 729, 733 (Ind. Ct. App. 1997). Rather, we must accept the ultimate facts as stated by the trial court if there is evidence to sustain them. *Id.* However, we review questions of law de novo and owe no deference to the trial court’s legal conclusions. *Shriner v. Sheehan*, 773 N.E.2d 833, 841 (Ind. Ct. App. 2002), *trans. denied*.

[15] The trial court found that the RMD check “became an asset of the Estate at the time of Roberts’s passing, and Frady as guardian was required to deliver the RMD check to the representative of the Estate,” pursuant to Indiana Code section 29-3-12-1(e)(1)(B). Appealed Order at 5. Roberts gave Frady the RMD Check and a completed deposit slip prior to his death for Frady to “deposit at the bank[.]” Tr., Vol. 2 at 36. Frady contends that the trial court “should have focused on the undisputed facts that Roberts gave Frady the check and deposit slip, [and] intended the joint checking account to receive it[.]” Appellant Br. at 17. The deposit slip clearly indicated that Roberts intended the RMD check to be deposited in the joint Greenfield Bank account.<sup>5</sup> *See Ex.*, Vol. 2 at 78. Frady testified that he and Roberts planned on depositing the RMD check on a

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<sup>5</sup> Roberts did not endorse the back of the RMD check.



Friday, but Roberts died that Wednesday. Frady then deposited the RMD check the afternoon of Roberts' death.

[16] Although its powers cease upon the protected person's death, the guardian may "exercise other powers that are necessary to complete the performance of the guardian's trust." Ind. Code § 29-3-12-1(e)(1)(A). Here, the record is clear that Roberts gave Frady the RMD check to be deposited in the Greenfield Bank account with the account number ending in 1415. The fact that the account was jointly owned by Roberts and Frady resulting in Frady receiving the money via survivorship is a matter of happenstance, one that does not negate the fact that Frady depositing the RMD check constituted the completion, as guardian, of a task entrusted to him by Roberts, the protected person.<sup>6</sup> We conclude that Frady depositing a check as instructed after the death of Roberts falls within the purview of Indiana Code section 29-3-12-1(e)(1)(A). Therefore, the trial court erred in sustaining the Estate's objection regarding the RMD check.

### III. Authority to Exercise Estate Planning

[17] Frady also argues that "[t]he Trial Court should hold a hearing on estate planning for Roberts."<sup>7</sup> Appellant Br. at 17. Because Frady's petitions for

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<sup>6</sup> We believe that Frady's "ownership" of the check is due to his right of survivorship in the joint bank account not simply because he was physically given the check.

<sup>7</sup> Frady does not argue that any due process owed to him was violated by the trial court's failure to hold a hearing nor does he point to any statutory language suggesting that the trial court is required to hold a hearing prior to dismissing a petition to exercise estate planning. Rather, his argument is primarily that Indiana Code section 29-3-12-1(e) should extend to estate planning even after the termination of guardianship

authority to exercise estate planning were denied, he appeals from a negative judgment. *Garling v. Ind. Dep't of Nat. Res.*, 766 N.E.2d 409, 411 (Ind. Ct. App. 2002) (stating that a negative judgment is one entered against a party who bore the burden of proof), *trans. denied*. On appeal, we will not reverse a negative judgment unless it is contrary to law. *Mominee v. King*, 629 N.E.2d 1280, 1282 (Ind. Ct. App. 1994). A judgment is contrary to law when the evidence is without conflict and leads to but one conclusion which is contrary to that reached by the trial court. *In re Marriage of Wooten*, 563 N.E.2d 636, 638 (Ind. Ct. App. 1990). And in determining whether a judgment is contrary to law, we consider the evidence in the light most favorable to the appellee, together with all the reasonable inferences to be drawn therefrom. *J.W. v. Hendricks Cnty. Office of Family & Children*, 697 N.E.2d 480, 482 (Ind. Ct. App. 1998).

[18] Indiana Code section 29-3-9-4.5(a) authorizes guardians to take steps directed to estate planning for the protected person “if the protected person has been found by the court to lack testamentary capacity.”<sup>8</sup> In doing so, the guardian’s disposition of the protected individual’s assets must be “consistent with the apparent intention of the protected person based on the protected person’s

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and because a guardian should be afforded this power, it was error for the trial court to dismiss his petitions without at minimum holding a hearing.

<sup>8</sup> The requirement that the protected person must be found to lack testamentary capacity implies that Indiana Code section 29-3-9-4.5(a) only applies when the protected person is alive.

declarations, practices, or conduct.” *In re Guardianship of E.N.*, 877 N.E.2d 795, 799 (Ind. 2007) (internal quotations omitted).

[19] As stated above, a guardianship terminates upon the death of the protected person; however, Frady argues that because a guardian may “exercise other powers that are necessary to complete the performance of the guardian’s trust[,]” Appellant Br. at 21 (quoting Ind. Code § 29-3-12-1(e)), guardians should be able to petition for estate planning after the death of the protected person where appropriate. Frady argues that “[a]ll evidence points to Roberts wanting Frady to inherit everything[,]” *id.* at 17, thus, “as guardian[, he] should be able to petition for estate planning as a part of the winding up of the guardianship[,]” *id.* at 20. We disagree.

[20] Here, Roberts died intestate; however, it is well established that a guardianship does not preclude a ward from executing a will. *Estate of Prickett v. Womersley*, 905 N.E.2d 1008, 1010 (Ind. 2009). Although there is some evidence Frady would have been Roberts’ intended beneficiary had he made a will, the particular facts of this case do not convince us that a guardian’s powers upon termination should be expanded to include estate planning after the death of the protected person. Further, estate planning is a power granted to guardians only upon authorization of the court and is not a guardianship power Frady possessed prior to Roberts’ death. Ind. Code § 29-3-9-4.5(a). Therefore, upon Roberts’ death and the termination of Frady’s guardianship, exercising estate planning would not constitute an action necessary to “complete the performance of the guardian’s trust.” Ind. Code § 29-3-12-1(e).

[21] We conclude that the trial court was not required to hold a hearing prior to dismissing Frady's petition to exercise estate planning because estate planning after the termination of guardianship falls outside of the purview Indiana Code section 29-3-12-1(e). Therefore, the trial court did not err in denying Frady's petitions to exercise estate planning.

## Conclusion

[22] We conclude that, after the termination of guardianship, Indiana Code section 29-3-12-1(e) permitted Frady to deposit a check as instructed; however, the trial court was not required to hold a hearing regarding estate planning prior to dismissing the petitions. Accordingly, we affirm the trial court's denial of Frady's petitions to exercise estate planning but reverse the trial court's order sustaining the Estate's objection to the RMD check.

[23] Affirmed in part and reversed in part.

Bailey, J., and May, J., concur.